

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

corrected

Special Civil Application No.9650 of 1995.

Date of Decision : 12.1.1996.

For Approval and Signature
The Hon'ble Mr.Justice M.R.Calla.

[1] Whether Reporters of Local Papers may be allowed
to see the judgment ?Yes.

[2] To be referred to the Reporter or not ?Yes

[3] Whether their Lordships wish to see the fair copy
of judgment ? No

[4] Whether this case involves a substantial question
of law as to the interpretation of
the Constitution of India, 1950 or any order made
thereunder ? No

[5] Whether it is to be circulated to the
Civil Judge ? No

Mr.V.B.Garania for the petitioner.

Mr.S.M.Mazgaonkar for the respondent-AMTS.

Coram : M.R.Calla,J

Dt.12.1.1996.

Oral Judgment :

This Special Civil Application is filed on behalf
of the present petitioners five in number working as
Conductors in the Ahmedabad Municipal Transport Service
(for short 'AMTS') all desirous of promotion to the post
of Controller. On 17.11.1995 the notice was issued in
this case as to why the petition should not be admitted
and finally disposed of at the admission stage. That
order by itself is treated as Rule and whereas the
pleadings are complete, as requested on behalf of both
the sides the matter was taken up for final hearing.

The petitioners have come with a case that the
respondents held oral interviews for the post of
controller in the month of May, 1995 on the basis of the
seniority in terms of the award of arbitration of May,

1991. The principal grievance raised on behalf of the petitioners is that the persons junior to the petitioners have been promoted as Controller and the petitioners have been superseded. The petitioners gave notice for demand of justice to the respondent but no reply thereto was given. In paras 4 and 5 of the petition, the petitioners have given certain names of their juniors and it is alleged that that the promotions have been given even to those employees whose service record is not clear.

It is also alleged that one Ravjibhai Dahyabhai Patel filed a Civil Suit No. 2660 of 1988 in the City Civil Court at Ahmedabad and the City Civil Court passed the order in his favour. The respondent preferred Appeal No. 1387 of 1995 before this Court and the High Court dismissed the appeal of the respondent-AMTS at the admission stage and confirmed the order of the Civil Court. The petitioners gave a legal notice through their lawyer and having failed to get the relief before the respondent the present petition is filed. An affidavit-in-reply dated 18.12.1995 was filed by the respondent to which the affidavit-in-rejoinder dated 19.12.1995 was filed by the petitioners and thereafter an affidavit-in-sur rejoinder on behalf of the petitioners dated 10.1.1995 was filed. Additional affidavit-in-sur rejoinder on behalf of the respondent dated 12.1.1990 has been filed.

At the outset, it may be stated that there is no dispute on the basis of the pleadings of the parties, that the criteria for promotion to the post of Controller from amongst the Conductors is seniority-cum-merit. As explained in the Award Part-XVI rendered by Shri G.S.Barot to which a categorical reference has been made by the respondent in its affidavit-in-reply dated 18.12.1995. The pleadings in the reply make it clear that there is no dispute even about the higher seniority of the present petitioners. Conductors who have been promoted as Controllers also include those who are juniors to the petitioners. The pleadings in the reply also make it clear that the candidature of the petitioners was considered on the basis of seniority-cum-merit but it has been stated that they were not found suitable having regard to their service record as has been stated in the affidavit-in-reply dated 18.12.1995. A list Exhibit 'A' has been annexed including the names of the employees who were selected for promotion and those who had not been found fit for promotion though considered. Nothing specific has been pointed out in the reply against any of the five petitioners.

Before I deal with the merits of the case, preliminary objection raised by Mr. Mazgaonkar on behalf of the respondent may be dealt with. The objection of Mr. Mazgaonkar is that the petitioners ought to have either filed the petition before promotions and now when the promotions have already been ordered, this petition cannot proceed unless juniors who have been promoted are impleaded as parties. Such objection raised on behalf of the respondent appears to be strange. Had the petitioners come earlier the petitions would have been sought to be dismissed as premature and it could not be known at that stage as to whether they are going to be considered or not and if considered, whether they would be denied a fair consideration. Now when the order has been passed promoting certain juniors at the most what can be said is that such juniors may be proper parties but it cannot be said that they are necessary parties and the non-impleading of such juniors as parties to this petition can not be fatal to the maintainability of the petition. Therefore, it is clear that this Special Civil Application cannot be dismissed on the ground that the persons who are juniors and who have been promoted are necessary parties when the petitioners simply seek to enforce the right of fair consideration and there is no prayer for setting aside anybody's promotion. The Preliminary objection raised by Mr. Mazgaonkar is therefore rejected.

The only question which arises in this Special Civil Application is as to whether the candidature of the five petitioners have received fair consideration in accordance with law for the purpose of promotion to the post of Controller or not. Once we proceed on the premises that the criteria for promotion is seniority-cum-merit, it has to be agreed on all hands, that senior persons fulfilling minimum requisite standards with no adverse remarks cannot be rejected and the junior persons even if having better record cannot be preferred over the seniors in a selection based on seniority-cum-merit. If that be the correct position of law with regard to selection, based on seniority-cum-merit, the petitioners who were admittedly seniors could not be superseded merely by saying that they were not found suitable having regard to their service record. Nothing specific has been alleged against any particular petitioner. By way of caution and giving concession to the respondent, in case of any omission to mention adverse material with regard to any of the petitioners, I called upon the learned counsel appearing for the AMTS to show from the record if there

is anything against any of these five petitioners so as to deny the promotion to them or to hold that in fact they were not suitable on the basis of their service record. Mr. Mazgaonkar placed before me a chart which contains the details about these five petitioners only. This chart does not include the norms of other candidates who were under consideration. The chart in the remarks column says against petitioner No.1 that he is physically weak, against petitioner No.2 he is irregular, against petitioner No.3, it is mentioned that the record is very poor, against respondent No.4 it is mentioned that he is physically weak and against petitioner No.5 it is mentioned that his record is not good. Now these remarks as are mentioned in the chart are neither here nor there and do not convey anything. How these opinions have been formed against these petitioners, who have formed these opinions, on what material these opinions have been formed against them and on what basis the conclusions have been arrived at that the record is not good, cannot be ascertained. This chart does not show that there were any adverse remarks against any of these petitioners. It is also not ascertained for what purpose this chart was prepared. Whether this chart was placed before the selection committee or not and how the selection committee evaluated the service record of these petitioners and therefore, even if the question of service record with the point of view of comparison with other candidates as to whether it was relatively good or not, is not taken into consideration at all by the court, one thing is very obvious that the candidature of these petitioners have not received a fair consideration in the eye of law and their supersession and the denial of promotion to them is unlawful.

It is the settled principle of law that under Article 16 of the Constitution of India every employee has a right of fair consideration. Real consideration means only a fair consideration and not a simple eye wash or an empty formality in the name of consideration. I have therefore no hesitation in holding that the petitioners herein have been subjected to glaring and hostile discriminatory vis-a-vis the juniors in the matters of promotion to the post of Controller. It appears that those considerations which ought not to have been taken into account against them have been taken into account against them and those which should have been taken into consideration have been ignored and hence the consideration of their candidature for the purpose of their promotion stands vitiated having the effect of rendering the petitioners to be juniors to their juniors.

In view of the above, this Special Civil Application succeeds. The respondent is directed to consider the case of the petitioners for the purpose of promotion to the post of Controller afresh in accordance with law with reference to their service record and assess their suitability on the basis of seniority cum merit. In case, as a result of such consideration if the petitioners are found to be suitable they may be granted promotion to the post of Controller from the due date i.e. the date on which their juniors were promoted with all consequential benefits as if they had been promoted on the date of the promotion of their juniors. The exercise as aforesaid and the direction of this court shall be completed and carried out within a period of one month from the date the copy of the order is served. Rule is made absolute accordingly. Direct Service is permitted.